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INTERNATIONAL PRELIMINARY EXAMINATION REPORT

10/519260

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference P21480PCAU	FOR FURTHER ACTION See Notification of Transmittal of International Preliminary Examination Report (Form PCT/IPEA/416).	
International Application No. PCT/AU2003/000762	International Filing Date (day/month/year) 19 June 2003	Priority Date (day/month/year) 21 June 2002
International Patent Classification (IPC) or national classification and IPC Int. Cl. ⁷ A23K 1/14, 1/18		
Applicant MARS INCORPORATED et al		

1. This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.

2. This REPORT consists of a total of 3 sheets, including this cover sheet.

☐ This report is also accompanied by ANNEXES, i.e., sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT).

These annexes consist of a total of sheet(s).

3. This report contains indications relating to the following items:

- I ☒ Basis of the report
- II ☐ Priority
- III ☐ Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- IV ☐ Lack of unity of invention
- V ☒ Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- VI ☐ Certain documents cited
- VII ☐ Certain defects in the international application
- VIII ☐ Certain observations on the international application

Date of submission of the demand 21 January 2004	Date of completion of the report 7 April 2004
Name and mailing address of the IPEA/AU AUSTRALIAN PATENT OFFICE PO BOX 200, WODEN ACT 2606, AUSTRALIA E-mail address: pct@ipaustalia.gov.au Facsimile No. (02) 6285 3929	Authorized Officer JAMIE TURNER Telephone No. (02) 6283 2071

I. Basis of the report**1. With regard to the elements of the international application:***

- ☒ the international application as originally filed.
- ☐ the description, pages , as originally filed,
pages , filed with the demand,
pages , received on with the letter of
- ☐ the claims, pages , as originally filed,
pages , as amended (together with any statement) under Article 19,
pages , filed with the demand,
pages , received on with the letter of
- ☐ the drawings, pages , as originally filed,
pages , filed with the demand,
pages , received on with the letter of
- ☐ the sequence listing part of the description:
pages , as originally filed
pages , filed with the demand
pages , received on with the letter of

2. With regard to the language, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language which is:

- ☐ the language of a translation furnished for the purposes of international search (under Rule 23.1(b)).
- ☐ the language of publication of the international application (under Rule 48.3(b)).
- ☐ the language of the translation furnished for the purposes of international preliminary examination (under Rules 55.2 and/or 55.3).

3. With regard to any nucleotide and/or amino acid sequence disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

- ☐ contained in the international application in written form.
- ☐ filed together with the international application in computer readable form.
- ☐ furnished subsequently to this Authority in written form.
- ☐ furnished subsequently to this Authority in computer readable form.
- ☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
- ☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished

4. ☐ The amendments have resulted in the cancellation of:

- ☐ the description, pages
- ☐ the claims, Nos.
- ☐ the drawings, sheets/fig.

5. ☐ This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).**

* Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report since they do not contain amendments (Rules 70.16 and 70.17).

** Any replacement sheet containing such amendments must be referred to under item 1 and annexed to this report

V. Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Claims 1-16	YES
	Claims	NO
Inventive step (IS)	Claims 1-16	YES
	Claims	NO
Industrial applicability (IA)	Claims 1-16	YES
	Claims	NO

2. Citations and explanations (Rule 70.7)

The following documents, first raised in the corresponding International Search Report, are referred to as follows:

- D1 - US 4 514 094 (See Example XXVI)
- D2 - US 4 514 431 (See Example XXVI)
- D3 - US 4 081 565 (See column 8, paragraph 4; Examples XIII and XXIV)
- D4 - US 4 076 852 (See column 9, paragraph 1; Example L)

The invention the subject of the present claims relates to a vegetarian pet food comprising a non-meat based flavour-enhancing additive which includes hydrolyzed vegetable protein and xylose, wherein the ratio of hydrolyzed vegetable protein to xylose is between 15:1 and 40:1 (claim 1). It further relates to a flavour-enhancing additive for pet foods comprising hydrolyzed vegetable protein and xylose, wherein the ratio of hydrolyzed vegetable protein to xylose is between 15:1 and 40:1 (claims 8-9).

None of the above cited art relates to a vegetarian pet food as claimed in claim 1. Hence, claim 1 and claims appended thereto are considered novel. It is evident that the claims could not be considered obvious when compared with any of these documents, either alone or in combination. Hence, claim 1 and claims appended thereto are considered to fulfil the requirements of inventive step as well.

Further, while D1-D4 disclose flavour additives that comprise both hydrolysed vegetable protein and xylose, these flavour additives are not for use in vegetarian pet foods but rather as meat-based flavour additives (such as for use in chicken soup). Further, the ratio of hydrolyzed vegetable protein to xylose in cited art documents D1-D4 falls well outside the range of ratios claimed (ie, 15:1 to 40:1) which provides the synergistic flavour effect to the additive. Hence, claims 8-9 are considered novel over D1-D4 as well as inventive over any obvious combination of D1-D4.